

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
Fax: 703-872-6113
Email: ARL-PF-
NPFCCCLAIMSINFO@uscg.mil

5890
November 14, 2013

[REDACTED]
IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
[REDACTED]

Claim No. J05003-0027

Dear Mr. Davis:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number J05003-0027 that involved the M/V SELENDANG AYU oil pollution incident for the total amount claimed of \$8,762.63.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number J05003-0027.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

[REDACTED]
Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number:	J05003-0027
Claimant:	IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
Type of Claimant:	Corporate RP
Type of Claim:	Claim for Amount Paid to Consultant, Chumis Cultural Resource Services
Claim Manager:	Eric Bunin
Amount Requested:	\$8,762.63

INCIDENT

The M/V SELENDANG AYU (SELENDANG or vessel) was on a voyage from Seattle to China on December 06, 2004. While operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. While attempting to repair the engine, the vessel drifted and eventually grounded on December 08, 2004 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's hull and bottom tanks, causing a discharge of approximately 330,000 gallons of bunkers into the waters off Unalaska Island.

CLAIMANT AND CLAIM

Claimants

Ayu Navigation Sdn Bhd (Ayu), IMC Shipping Co. Pte. Ltd. (IMC), Sveriges Angfartygs Assurans Forening (The Swedish Club), and International Group of Protection and Indemnity Clubs (International Group) (collectively "Claimants") are the responsible parties (RP) under the Oil Pollution Act of 1990 (OPA) and their insurers. Ayu owned the vessel, and IMC operated it. The Swedish Club, International Group, and the International Group's reinsurers were the subrogated underwriters.

Pursuant to 33 U.S.C. § 2708(a)(2), the Claimants presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) via the National Pollution Funds Center (NPFC) on December 07, 2007, asserting entitlement to a limit on its liability for oil removal costs and damages resulting from the incident. The Claimants sought reimbursement for incurred removal costs and for damages paid to third parties above their liability limit. On January 27, 2012, the NPFC determined that the Claimants were entitled to their statutory limit of liability, \$23,853,000.

Claim

The Claimants sent a letter to the National Pollution Funds Center (NPFC) dated December 6, 2007 outlining their claims for which they were seeking reimbursement for damages they paid to third parties. Attached to this letter were exhibits, including a summary of claimed costs.¹ By letter dated March 21, 2012, Claimants submitted a document entitled Third Party Claim Detail that listed all costs paid to third party claimants plus RP costs paid for certain vendors' services. This claim before the Fund seeks reimbursement of amounts Claimants paid for consulting services paid to Chumis Cultural Resources Services (Chumis). In this claim, Claimants seek reimbursement of \$8,762.62 paid to Chumis for consulting services provided to Keesal, Young

¹ Initial submission, tab 2.

& Logan in preparation for mediation of claims submitted by landowners, the St. George Tanaq Corporation and the Atxam Corporation.

APPLICABLE LAW

The Oil Pollution Act of 1990 provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C §2702 (a).

A responsible party “may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that” it is entitled to a limitation of liability under §1004 of OPA. 33 U.S.C. §2708(a)

Responsible parties who have demonstrated entitlement to a limit of liability may submit claims to the Oil Spill Liability Trust Fund for removal costs and damages incurred by the responsible party, plus amounts paid by the responsible party for claims asserted under section 1013 of OPA.

The Fund shall be available to the President for the payment of claims for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712(a)(4). Covered damages under U.S.C. §2702 (b)(2)(A) – (F) are natural resources, real or personal property, subsistence use, government revenues, profits and earning capacity and public services.

DETERMINATION

Chumis was hired by Keesal, Young & Logan (KYL), attorneys for the Claimants, who seek reimbursement of \$8,762.63 paid to Chumis. According to invoices provided to the NPFC this payment was for “[p]rofessional, cultural resource consulting services assisting with St. George Tanaq and Atxam Corporations mediation proposal review and settlement discussion.”² The services were provided in relation to the mediation between the two tribal corporations and KYL, representing the RP.³

The claimed costs are costs the RP incurred for retaining consulting services in preparation for mediation of third party claims. They are fees associated with KYL’s legal representation of the RP in dealing with third party claimants. Costs expended to prepare for mediation and/or settlement with third party claimants are not removal costs or damages as defined under OPA. Because this claim seeks reimbursement of costs that are not specifically authorized by OPA, they cannot be paid by the Fund. This claim is denied.

Claim Supervisor:

Date of Supervisor’s review: 11/14/2013

Supervisor Action: Denial Approved.

Supervisor’s Comments:

² Claimant’s invoices: Number 07-56 dated December 4, 2007, and Number 08-11 dated March 27, 2008

³ See, Chumis invoices and attachments briefly describing activities.